

# House Study Bill 245

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
STATE GOVERNMENT BILL  
BY CHAIRPERSON ELGIN)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act concerning payment of retained funds on public  
2 improvements.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 2153YC 81  
5 ec/gg/l4

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1 1 Section 1. Section 573.14, Code 2005, is amended to read  
1 2 as follows:  
1 3 573.14 RETENTION OF UNPAID FUNDS.  
1 4 1. The fund provided for in section 573.13 shall be  
1 5 retained by the public corporation for a period of thirty days  
1 6 after the completion ~~and final acceptance date~~ of the  
1 7 improvement. If at the end of the thirty-day period claims  
1 8 are on file ~~as provided~~ or minor items of work remain  
1 9 incomplete, the public corporation shall continue to retain  
1 10 from the unpaid funds a sum equal to double the total amount  
1 11 of all claims on file ~~and the value of all minor items of work~~  
1 12 ~~that remain incomplete~~. The remaining balance of the unpaid  
1 13 fund, or if no claims are on file ~~and no minor items of work~~  
1 14 ~~remain incomplete~~, the entire unpaid fund, shall be released  
1 15 and paid to the contractor.  
1 16 2. For purposes of this section:  
1 17 a. "Completion date" means the earlier of the following:  
1 18 (1) ~~The date of the completion and final acceptance of the~~  
1 19 ~~improvement indicating that all work under the contract has~~  
1 20 ~~been completed and all required materials, certifications, and~~  
1 21 ~~other documentations required to be submitted by the~~  
1 22 ~~contractor and specified by the contract have been furnished~~  
1 23 ~~to the awarding public corporation by the contractor.~~  
1 24 (2) ~~Except for board of regents' public improvements, the~~  
1 25 ~~date when substantial completion of the improvement has~~  
1 26 ~~occurred.~~  
1 27 b. "Substantial completion of the improvement" means the  
1 28 ~~date the first of any of the following occurs:~~  
1 29 (1) ~~The date the public improvement has been substantially~~  
1 30 ~~completed in general accordance with the terms and provisions~~  
1 31 ~~of the contract.~~  
1 32 (2) ~~The date the public corporation beneficially uses or~~  
1 33 ~~occupies the public improvement, except in the case where the~~  
1 34 ~~public improvement involves renovation or alteration of an~~  
1 35 ~~existing facility in which the public corporation maintains~~  
2 1 ~~beneficial use or occupancy during the course of the public~~  
2 2 ~~improvement.~~  
2 3 (3) ~~The date the public improvement is approved or~~  
2 4 ~~certified for use or occupancy by the applicable public~~  
2 5 ~~corporation.~~  
2 6 (4) ~~The date the public improvement is certified as having~~  
2 7 ~~been substantially completed by the architect or engineer~~  
2 8 ~~authorized to make such certification.~~  
2 9 (5) ~~The date the public improvement is certified as having~~  
2 10 ~~been substantially completed by the contracting authority~~  
2 11 ~~representing the public corporation.~~  
2 12 3. The public corporation shall order payment of any  
2 13 amount due the contractor to be made in accordance with the  
2 14 terms of the contract. Except as provided in section 573.12  
2 15 for progress payments, failure to make payment pursuant to  
2 16 this section, of any amount due the contractor, within forty  
2 17 days, unless a greater time period not to exceed fifty days is  
2 18 specified in the contract documents, after the ~~work under the~~

2 19 contract has been completed and if the work has been accepted  
2 20 ~~and all required materials, certifications, and other~~  
2 21 ~~documentations required to be submitted by the contractor and~~  
2 22 ~~specified by the contract have been furnished the awarding~~  
2 23 ~~public corporation by the contractor completion date, shall~~  
2 24 cause interest to accrue on the amount unpaid to the benefit  
2 25 of the unpaid party. Interest shall accrue during the period  
2 26 commencing the thirty-first day following the completion of  
2 27 ~~work and satisfaction of the other requirements of this~~  
2 28 ~~paragraph date~~ and ending on the date of payment. The rate of  
2 29 interest shall be determined by the period of time during  
2 30 which interest accrues, and shall be ~~the same as the rate of~~  
2 31 ~~interest that is in effect under section 12C.6, calculated as~~  
2 32 ~~the prime rate plus one percent per year as of the day~~  
2 33 interest begins to accrue, ~~for a deposit of public funds for a~~  
2 34 ~~comparable period of time. This paragraph subsection does not~~  
2 35 abridge any of the rights set forth in section 573.16. Except  
3 1 as provided in sections 573.12 and 573.16, interest shall not  
3 2 accrue on funds retained by the public corporation to satisfy  
3 3 the provisions of this section regarding claims on file or  
3 4 ~~minor items of work that remain incomplete. This chapter does~~  
3 5 not apply if the public corporation has entered into a  
3 6 contract with the federal government or accepted a federal  
3 7 grant which is governed by federal law or rules that are  
3 8 contrary to the provisions of this chapter. For purposes of  
3 9 this subsection, "prime rate" means the prime rate charged by  
3 10 banks on short-term business loans, as determined by the board  
3 11 of governors of the federal reserve system and published in  
3 12 the federal reserve bulletin.

3 13 EXPLANATION

3 14 Current law provides that payments made under contract for  
3 15 the construction of public improvements shall be made based  
3 16 upon monthly estimates of work performed with an amount of not  
3 17 more than 5 percent to be retained by the public corporation  
3 18 to eventually be paid upon completion of the public  
3 19 improvement. This bill provides for when this retained amount  
3 20 shall be paid and modifies current law by providing that it  
3 21 shall be paid when work is substantially completed.

3 22 The bill provides that for public corporations that are not  
3 23 the board of regents, the retained amount shall be paid to the  
3 24 contractor upon substantial completion of the improvement.  
3 25 Current law provides for the payment of the retained amount  
3 26 only upon final completion of the improvement. The bill  
3 27 defines "substantial completion of the improvement" as the  
3 28 earliest of the date the improvement has been substantially  
3 29 completed according to the contract, the date the public  
3 30 corporation uses or occupies the public improvement unless the  
3 31 improvement involved renovation or alteration of an existing  
3 32 facility continued to be used by the public corporation, the  
3 33 date the public improvement is approved or certified for use  
3 34 or occupancy, and the date the public improvement is certified  
3 35 as having been substantially completed by the architect or  
4 1 engineer authorized to make such certification or by the  
4 2 contracting authority representing the public corporation.  
4 3 The bill provides that the public corporation can still retain  
4 4 an amount equal to two times the value of all minor items of  
4 5 work that remain incomplete on the project. Current law that  
4 6 allows the public corporation to retain double the amount of  
4 7 claims on file is not changed by the bill.

4 8 The bill further provides that interest calculated on the  
4 9 retained funds unpaid shall be the prime rate plus 1 percent.  
4 10 Current law sets the interest rate as the rate set by a  
4 11 committee for public deposits of money.

4 12 LSB 2153YC 81

4 13 ec:nh/gg/14